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State of Utah
DEPARTMENT OF NATURAL RESOURCES
Division of Water Rights

MICHAEL R. STYLER KENT L. JONES
Executive Director *State Engineer/Division Director*

DEC 8 2009

ORDER OF THE STATE ENGINEER
For Permanent Change Application Number 25-10953 (a35689)

Permanent Change Application Number 25-10953 (a35689), in the name of Little Bear Creek, LLC, was filed on June 23, 2009, to change the point of diversion, place of use, and change the nature of use of 1.48 acre-feet (af) of water as evidenced by Water Right Number 25-10953. Heretofore, the water has been diverted from a well located South 410 feet and East 1085 feet from the N $\frac{1}{4}$ Corner of Section 29, T12N, R1E, SLB&M (existing 4-inch well, 51 feet deep). The water has been used for the irrigation of 0.37 acre from April 1 to October 31. The water was used in all or portion(s) of Section 29, T12N, R1E, SLB&M.

Hereafter, it is proposed to divert 1.34 acre-feet of water from a well located North 355 feet and West 100 feet from the E $\frac{1}{4}$ Corner of Section 27, T11N, R1W, SLB&M (6-inch well, 100-500 feet deep). The nature of use of the water is being changed to the irrigation of 0.25 acre from April 1 to October 31, the indoor domestic requirements of one equivalent domestic unit from January 1 to December 31, and the stockwatering requirements of five head of livestock (in cattle or horses or equivalent species) from January 1 to December 31. The place of use of the water is being changed to all or portion(s) of Section 27, T11N, R1W, SLB&M.

Notice of the application was published in The Herald Journal on July 23 and 30, 2009, and a protest was received from W. Wayne Bankhead. A hearing was held on December 3, 2009.

The protestant is concerned with the potential impact of wells on springs north of Wellsville. He irrigates with water from Darley Spring and Hansen Spring through the Wellsville North Field Irrigation Company.

It is the opinion of the State Engineer that this change application can be approved without adversely affecting existing rights. There is reason to believe if wells are drilled below confining layers in the aquifer at depths below the springs they can be protected.

It is, therefore, **ORDERED** and Permanent Change Application Number 25-10953 (a35689) is hereby **APPROVED** subject to prior rights and the following condition:

The well casing is not to be perforated above a point 20 feet below a confining layer encountered at least 100 feet below the ground surface at the well point of diversion.

The State Engineer has statutory responsibility to create and maintain water right records based on an administrative process outlined in statute. The State Engineer is not authorized by statute to adjudicate water right title or the validity of established water rights. It is noted that failure to exercise a water right within the statutory period could render all or a portion of a water right

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invalid through forfeiture. Parties who wish to challenge the validity of a water right are advised that a declaration of forfeiture is a judicial action and the courts are available to pursue such suits. (UCA 73-1-4).

As noted, this approval is granted subject to prior rights. The applicant shall be liable to mitigate or provide compensation for any impairment of or interference with prior rights as such may be stipulated among parties or decreed by a court of competent jurisdiction.

The applicant is strongly cautioned that other permits may be required before any development of this application can begin and it is the responsibility of the applicant to determine the applicability of and acquisition of such permits. Once all other permits have been acquired, this is your authority to develop the water under the above referenced application which under Sections 73-3-10 and 73-3-12, Utah Code Annotated, 1953, as amended, must be diligently prosecuted to completion. The water must be put to beneficial use and proof, or an affidavit of beneficial use, must be filed on or before **December 31, 2014**, or a request for extension of time must be acceptably filed; otherwise the application will be lapsed. This approval is limited to the rights to divert and beneficially use water and does not grant any rights of access to, or use of land or facilities not owned by the applicant.

Proof of beneficial use is evidence to the State Engineer that the water has been placed to its full intended beneficial use. By law, it must be prepared by a registered engineer or land surveyor, who will certify to the location and uses of the extent of your water right. Upon the submission of proof as required by Section 73-3-16, Utah Code, for this application, the applicant must identify every source of water used under this application and the amount of water used from that source. An affidavit of beneficial use may be filed by the applicant in lieu of a formal proof after the water is placed to beneficial use under certain circumstances. The applicant is referred to Section 73-3-5.6 UCA and the Division's website for further information on filing an affidavit of beneficial use.

Failure on your part to comply with the requirements of the applicable statutes may result in the lapsing of this permanent change application.

It is the applicant's responsibility to maintain a current address with this office and to update ownership of their water right. Please notify this office immediately of any change of address or for assistance in updating ownership.

Your contact with this office, should you need it, is with the Northern Regional Office. The telephone number is 435-752-8755.

This Order is subject to the provisions of Administrative Rule R655-6-17 of the Division of Water Rights and to Sections 63G-4-302, 63G-4-402, and 73-3-14 of the Utah Code which provide for filing either a Request for Reconsideration with the State Engineer or an appeal with the appropriate District Court. A Request for Reconsideration must be filed with the State Engineer within 20 days of the date of this Order. However, a Request for Reconsideration is

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not a prerequisite to filing a court appeal. A court appeal must be filed within 30 days after the date of this Order, or if a Request for Reconsideration has been filed, within 30 days after the date the Request for Reconsideration is denied. A Request for Reconsideration is considered denied when no action is taken 20 days after the Request is filed.

Dated this 8 day of December, 2009.

John R. Mann FOR
Kent L. Jones, P.E., State Engineer

Mailed a copy of the foregoing Order this 8 day of December, 2009 to:

Little Bear Creek, LLC
484 West 2600 South
Nibley, UT 84321

W. Wayne Bankhead
780 South Center Street
Wellsville, UT 84339

BY: Kelly K. Horne
Kelly K. Horne, Applications/Records Secretary